

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

FREDERICK C. NEWBY,

Defendant.

CASE NO. 8:11CR389

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”), the government’s objections (Filing No. 36), and the Defendant’s objections (Filing No. 37). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

Generally, the parties object to portions of the PSR because they conflict with the facts the parties relied on in negotiating their plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). The Rule 11(c)(1)(C) plea agreement includes an agreement for a 60-month sentence.

It is likely that the Court will honor the Rule 11(c)(1)(C) agreement and, therefore, the parties' objections are denied, without prejudice, in these tentative findings. The Court's Tentative Findings are that the PSR is correct. If either party reasserts its objections, they may be reasserted orally at sentencing.

IT IS ORDERED:

1. The Court's tentative findings are that the government's objections to the Revised Presentence Investigation Report (Filing No. 36) are denied;

2. The Court's tentative findings are that the Defendant's objections to the Revised Presentence Investigation Report (Filing No. 37) are denied;

3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects; and

4. This matter will be discussed at sentencing.

DATED this 12th day of June, 2012.

BY THE COURT:

S/Laurie Smith Camp
Chief United States District Judge